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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/599,005	09/18/2006	Alexander Johannes Jozef Bos	NL040303US1	3093

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EXAMINER

TEKLE, DANIEL T

ART UNIT	PAPER NUMBER
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2621

MAIL DATE	DELIVERY MODE
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06/21/2010

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/599,005	Applicant(s) BOS, ALEXANDER JOHANNES JOZEF	
	Examiner DANIEL TEKLE	Art Unit 2621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 September 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. **Claim 11-21** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

3. The claim recites, *inter alia*, “A computer readable storage medium having a computer readable program stored thereon that is ...” After close inspection, the Examiner respectfully notes that the disclosure, as a whole, does not specifically identify what may be included as a computer readable storage medium and what is not to be included as a computer readable storage medium.

4. An Examiner is obliged to give claims their broadest reasonable interpretation consistent with the specification during examination. The broadest reasonable interpretation of a claim drawn to a computer readable medium (also called machine readable medium and other such variations) typically covers forms of non-transitory tangible media and transitory propagating signals *per se* in view of the ordinary and customary meaning of computer readable media, particularly when the specification is silent. See MPEP 2111.01. When the broadest reasonable interpretation of a claim covers a signal, *per se*, the claim must be rejected under 35 U.S.C. § 101 as covering non-statutory subject matter.

5. Therefore, given the silence of the disclosure and the broadest reasonable interpretation, the computer readable storage medium of the claim may include

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transitory propagating signals. As a result, the claim pertains to non-statutory subject matter.

6. However, the Examiner respectfully submits a claim drawn to such a computer readable medium that covers both transitory and non-transitory embodiments may be amended to narrow the claim to cover only statutory embodiments to avoid a rejection under 35 U.S.C. § 101 by adding the limitation “non-transitory” to the claim. Such an amendment would typically not raise the issue of new matter, even when the specification is silent because the broadest reasonable interpretation relies on the ordinary and customary meaning that includes signals *per se*. For additional information, please see the Patents’ Official Gazette notice published February 23, 2010 (1351 OG 212).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-21 rejected under 35 U.S.C. 102(b) as being anticipated by Bruls (US 2002/0012530).

Regarding Claim 1: Bruls discloses a method of recording multiple sets of data on at least one data carrier (20), comprising the steps of: reading program information regarding at least two different sets of data to be recorded on the at least one data carrier in a timed recording sequence, which information comprises the length of time

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used by each set of data when being played (**paragraph 0001**), (step 34), calculating the recording length of all sets of data (**paragraph 0010**), (step 36), determining the available recording space on the at least one data carrier for all unrecorded sets of data of the timed recording sequence (**paragraph 0002**), (step 38), setting a recording quality for all sets of unrecorded data in the timed recording sequence so as to enable all sets of data to be fitted to the available space, recording a set of data with the set recording quality (**paragraph 0005 and 0010**), (step 40), and repeating the steps of determining, setting and recording for each set of unrecorded data, until all sets have been recorded (**paragraph 0001-0005**).

Regarding Claim 2: Bruls discloses a Method according to claim 1, wherein the program information concerning one set of data comprises a fixed recording quality, and the step of setting a recording quality comprises setting the fixed recording quality to said one set of data and setting a recording quality for the other sets of data such that said other sets of data can be fitted to the available space (**paragraph 0005**).

Regarding Claim 3: Bruls discloses a Method according to claim 1, further comprising the steps of reading program information regarding another set of data not provided in the timed recording sequence, determining whether the new set of data can be included in the timed recording sequence at least with the lowest possible recording quality, and, if possible, including the added set of data in the sequence (**paragraph 0006**).

Regarding Claim 4: Bruls discloses a Method according to claim 1, further comprising the steps of identifying a manual recording of a set of data on the at least one data carder, determining whether unrecorded sets of data in the timed recording sequence

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can be recorded with at least the lowest possible recording quality on the at least one data carrier when the manual recording has ended and changing the recording quality, if possible and necessary (**paragraph 0006-0007**).

Regarding Claim 5: Bruls discloses a method according to claim 1, wherein the available recording space is determined by a start marker and an end marker related to the at least one data carrier (**paragraph 0022**).

Regarding Claim 6: Bruls discloses a Method according to claim 5, wherein the start marker is a positional pointer and the end marker is an end of carrier marker (**paragraph 0022**).

Regarding Claim 7: Bruls discloses a method according to claim 5, wherein the start and end markers are user defined start and end markers (**paragraph 0022**).

Regarding Claim 8: Bruls discloses a method according to claim 5, further comprising the step of changing the available recording space by moving the start marker (**paragraph 0022**).

Regarding Claim 9: Bruls discloses a method according to claim 1, further comprising the steps of detecting the removal of program information relating to a set of data and repeating the steps of determining, setting and recording for each set of unrecorded data for the remaining unrecorded sets of data after said removal (**paragraph 0022**).

Regarding Claim 10: Bruls discloses a Method according to claim 1, wherein the recording space of the at least one data carrier where the timed recording sequence is to be stored comprises at least one protected area splitting said available recording space into fragments, wherein the step of setting a recording quality comprises

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adjusting the recording quality for unrecorded sets of data to fit into the fragments and further comprises the step of selecting unrecorded sets of data for storage in fragments having a large enough size (**paragraph 0010**).

Regarding Claim 10: Claims 11-20 reject for the same reason to claims 1-10 respectively as discussed above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL TEKLE whose telephone number is (571)270-1117. The examiner can normally be reached on 7:30am to 5:00pm M-R and 7:30-4:00 Every other Friday..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marsha D. Banks-Harold can be reached on 571-272-7905. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Marsha D. Banks-Harold/

Supervisory Patent Examiner, Art Unit 2621

/Daniel Tekle/

Examiner, Art Unit 2621